

# **EXHIBIT**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

IN RE BLUE CROSS BLUE SHIELD	:	
ANTITRUST LITIGATION	:	Master File 2:13-cv-20000-RDP
MDL 2406	:	
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**PLAINTIFFS' STATUS REPORT ON PRIVILEGE SAMPLING**

Since the sampling process began on November 1, 2017, Plaintiffs have devoted thousands of hours to identifying and challenging most of the approximately 700,000 privilege log entries on Defendants' logs. Plaintiffs are pleased to report that work has been incredibly productive—to date, the privilege review system designed by this Court has resulted in **Defendants de-designating and producing approximately 450,000 documents from their privilege logs.** This number, by any metric, is simply staggering. As of November 8, 2017, Defendants came into this Court and certified that all of their log entries were reviewed by attorneys and were found to be privileged, and yet **64%** of all of those log entries have since been produced. There is simply no precedent for such a large-scale failure to comply with the rules of discovery.

After Plaintiffs selected their samples on November 10, 2017, Defendants ultimately voluntarily de-designated 40% of all samples before Judge Harwood even reviewed the documents—just days after certifying that all logged documents were privileged. Thus, before Judge Harwood reviewed the samples, certain

samples were not even submitted to Judge Harwood at Defendants' own withdrawal of privilege.

While this voluntary de-designation number was shocking at the time, it does not hold a candle to the final results—**between Defendants' de-designations and Judge Harwood's findings, approximately 80% of all sampled documents have been found not privileged:**

**Table 1**  
**Total Documents De-Designated By Privilege Master**

<b>R&amp;R Def</b>	<b>Date issued</b>	<b>Total Samples</b>	<b>Total De-Designated in Whole or Part (after Objections) By Privilege Master</b>	<b>Percent De-Designated in Whole or Part By Privilege Master</b>
BCBS-LA	2/21/2018	24	24	100.0%
BCBS-NC	7/30/2018	25	24	96.0%
BCBS-AZ	7/25/2018	94	88	93.6%
HMSA	6/26/2018	15	14	93.3%
Anthem	5/18/2018	127	112	88.2%
Horizon	5/30/2018	25	22	88.0%
BCBS-NE	10/5/2018	25	22	88.0%
BCBS-MA	3/6/2018	15	13	86.7%
BCBS-VT	3/13/2018	15	13	86.7%
Capital	6/26/2018	129	110	85.3%
BCBS-TN	3/14/2018	67	57	85.1%
Highmark	6/11/2018	127	108	85.0%
Independence	7/27/2018	167	142	85.0%
BCBS-ND	3/13/2018	53	45	84.9%
HCSC	5/11/2018	168	139	82.7%
BCBS-AL	2/21/2018	88	71	80.7%
BCI	7/12/2018	61	49	80.3%

<b>R&amp;R Def</b>	<b>Date issued</b>	<b>Total Samples</b>	<b>Total De-Designated in Whole or Part (after Objections) By Privilege Master</b>	<b>Percent De-Designated in Whole or Part By Privilege Master</b>
BCBS-KS	8/14/2018	66	53	80.3%
BCBS-KC	10/4/2018	86	69	80.2%
BCBS-FL	2/27/2018	25	20	80.0%
BCBS-MN	2/16/2018	14	11	78.6%
BS-CA	4/30/2018	110	85	77.3%
BCBS-SC	1/25/2018	15	11	73.3%
Wellmark	6/13/2018	25	18	72.0%
Carefirst	10/5/2018	159	110	69.2%
BCBS-WY	1/25/2018	15	10	66.7%
TSS	1/30/2018	15	10	66.7%
BCBS-RI	2/5/2018	24	16	66.7%
Cambia	7/12/2018	15	10	66.7%
BCBSA	1/31/2018	87	47	54.0%
Healthnow	5/11/2018	15	8	53.3%
BCBS-MS	2/16/2018	10	5	50.0%
BCBS-AR	3/23/2018	10	5	50.0%
Excellus	4/10/2018	10	5	50.0%
BCBS-MI	3/14/2018	25	11	44.0%
Premera	4/24/2018	23	10	43.5%
<b>Totals:</b>		<b>1974</b>	<b>1567</b>	<b>79.4%</b>

Altogether, these numbers paint a troubling picture in light of the Court's order to have Defendants personally certify each of the entries on the privilege log as privileged. Defendants have commanded multiple resources in this litigation for over a year due to their own lack of diligence, requiring the exertion of an unfathomable amount of time and resources on the part of Plaintiffs, this Court, the

Special Master and the Privilege Master to even attempt to untangle their privilege logs. Additionally, at a minimum, Plaintiffs were deprived for the vast majority of these documents during discovery.

Despite the above metrics, only one Defendant has chosen to re-review the entirety of its own privilege log, meaning the rest of the Defendants have only reviewed those entries specifically challenged by Plaintiffs.

At this point, it appears that approximately 250,000 documents remain on Defendants' privilege logs. Plaintiffs are prepared to discuss next steps with the Court at tomorrow's discovery conference.

Dated: January 14, 2019

Respectfully Submitted,

/s/ Barry Ragsdale

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## **CERTIFICATE OF SERVICE**

I hereby certify that on January 14, 2019, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Barry Ragsdale  
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*Plaintiffs' Liaison Counsel*